

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>OSSAMA HASSAN</b>	:	DETERMINATION DTA NO. 818955
for Revision of a Determination or for Refund of Cigarette Tax under Article 20 of the Tax Law for the Period September 25, 2000.	:	

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Petitioner, Ossama Hassan, 42-43 Ithaca Street, Apt. 5-K, Elmhurst, New York 11373, filed a petition for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the period September 25, 2000.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on January 23, 2003 at 10:30 A.M., with all briefs to be submitted by April 11, 2003, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle H. Helm, Esq., of counsel).

***ISSUE***

Whether petitioner is liable for the penalty imposed by the Division of Taxation for failure to be registered as a dealer of cigarettes and tobacco products for the year 2000.

***FINDINGS OF FACT***

1. Petitioner, Ossama Hassan, is the owner of the Empire Deli, located at 6249 Woodhaven Boulevard, Flushing, New York.

2. On September 25, 2000, an investigator from the Alcohol, Cigarette and Tobacco Products Bureau of the Division of Taxation (“Division”) conducted a retail inspection of Empire Deli. The investigator concluded that petitioner was selling cigarettes without a valid New York State Certificate of Registration. This conclusion is stated on the Tax Enforcement Referral Report filed by the investigator. An accompanying Cigarettes, Alcohol and Tobacco Regulatory Report indicates that on the date of the inspection, there were three cartons of cigarettes “on hand” at Empire Deli. This latter report also identifies A & T Tobacco as petitioner’s supplier of cigarettes and tobacco products, and indicates petitioner’s purchase of three cartons of cigarettes under an invoice dated September 19, 2000. The report lists the tax stamp numbers for the cigarettes.

3. On April 23, 2001, the Division issued to petitioner a Notice of Determination assessing a penalty in the amount of \$2,500.00 pursuant to Tax Law former § 480-a(3)(a). This notice included the following statement in explanation:

During an inspection of your premises, on 09/25/00, you were found to be in violation for failure to possess a valid New York State certificate of registration for retail sales of cigarette and/or tobacco products.

Therefore, a civil fine is imposed under Article 20 of the New York State Tax Law.

4. It is undisputed that petitioner had a valid City of New York license to act as a retail dealer in cigarettes for the years 1998, 1999, 2001 and 2002. Petitioner also obtained a valid New York State retail dealer certificate of registration for cigarettes and/or tobacco products for the years 2001 and 2002. At the hearing, petitioner admitted that he did not have a valid New York State certificate of registration to sell cigarettes and tobacco products at the time of the inspection on September 25, 2000.

5. Petitioner was previously issued a Notice of Determination on June 28, 1999 under which a fine in the amount of \$1,000.00 was assessed for the same violation as is stated in this matter, to wit, selling cigarettes without a valid Certificate of Registration. The date of the sale of the earlier violation was November 1, 1998. Petitioner does not dispute the lack of a valid license for 1998. It appears that the assessment for the 1998 violation was paid.

6. The annual registration fee for a New York State Certificate of Registration is \$100.00.

### ***CONCLUSIONS OF LAW***

A. Tax Law former § 480-a(1)(a) provides that every retail dealer of cigarettes and tobacco products is required to register with the Division and publicly display a certificate of registration in each place of business in New York State. Tax Law former § 480-a(3)(a) provides that any retail dealer who violates the foregoing provision shall, for a first violation, be liable for a civil fine not to exceed \$1,000.00. A second or subsequent violation within three years following a prior finding of a violation results in liability for a civil fine not to exceed \$2,500.00.

B. Petitioner admitted that he did not have a valid certificate of registration for the year 2000 at the time of the inspection on September 25, 2000. It also appears that he did not have a valid certificate of registration for the year 1998 at the time of the earlier inspection on November 1, 1998. The investigator's report reveals that there were three cartons of cigarettes on hand at the premises on the date of the inspection. In addition, the report indicates that petitioner purchased three cartons of cigarettes from his supplier on September 19, 2000. Such circumstances clearly support the conclusion that petitioner did not have a valid certificate of registration for the year 2000 and had, and was offering, cigarettes for sale.

C. Under the facts of this case, petitioner was clearly in violation of Tax Law former § 480-a on September 25, 2000, and thus was subject to the assessment of a civil fine as provided thereunder. It is also clear that this violation was a second violation under such section and that it occurred within three years after the 1998 violation for which an assessment was issued on June 28, 1999. Consequently, the \$2,500.00 amount of the fine was proper pursuant to Tax Law former § 480-a(3)(a) ( *see, Matter of Vinter*, Tax Appeals Tribunal, September 27, 2001, *confirmed* \_ AD2d \_\_, \_ NYS2d \_ [3d Dept 2003]).

D. The petition of Ossama Hassan is hereby denied and the notice of determination dated April 23, 2001 is sustained.

DATED: Troy, New York  
August 7, 2003

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE